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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,201

10/06/2005

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H0005631

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128 7590 06/05/2009
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EXAMINER

YOON, TAE H

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 39-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

This is New Matter rejection since the recited “at least three solvents’ in claim 39 does not have support, and applicant failed to point any section of specification. Choosing a range (at least three) within a broad range (originally recited at least two which encompasses dozens, for example) must have a reasonable support. ***In re Wertheim***, 541 F.2d 257, 191 USPQ 90 (CCPA 1976).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 40 and 41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited “an alcohol-based solvent” in claim 40 (and 41) improperly broadens scope of claims 39 and 36 wherein “alcohol” is recited, and it is indefinite. Thus, it is unclear whether said alcohol-based solvent of claims 40 and 41 is the alcohol of claim

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36 or not (actually claim 41 recites alcohols and thus it is further confusing whether the recited three solvents of claim 39 are actually two solvents or not).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-21, 24-27, 30-36, 39-49 and 51-55 are rejected under 35 U.S.C. 103(a) as obvious over SU 1364051 A1 in view of Drage (US 5,858,547) and Arias et al (US 2003/0165774 A1).

Rejection is maintained for reason of record with following response.

The recitation of “consisting essentially of” alone cannot overcome the rejection based on the art reciting “comprising”. See *In re De Lajarte*, 337 F2d 870, 143 USPQ 256 (CCPA, 1964); When applicant contends that modifying components in the reference composition are excluded by the recitation of “consisting essentially of”, applicant has the burden of showing the basic and novel characteristics of his composition – i.e. a showing that the introduction of these components (quinine-based compounds) would materially change characteristics of applicant’s invention.

Drage teaches use of various solvents and combination thereof at col. 5, lines 4-25, and thus utilization of at least three solvents in SU would be an obvious modification to one skilled in the art absent showing otherwise.

Claims 18-22, 24-27, 30-36, 39-49 and 51-55 are rejected under 35 U.S.C. 103(a) as obvious over SU 1364051 A1 in view of Drage (US 5,858,547) and Arias et al (US 2003/0165774 A1), and further in view of Rahman et al (US 5,928,836).
Rejection is maintained for reason of record with above response.

Claims 18-21, 24-27, 30-36, 39-49 and 51-56 are rejected under 35 U.S.C. 103(a) as obvious over SU 1364051 A1 in view of Drage (US 5,858,547) and Arias et al (US 2003/0165774 A1), and further in view of McCutcheon et al (US 2007/0105384 A1) or Patil et al (US 2003/0207209 A1).
Rejection is maintained for reason of record with above response.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tae H Yoon/
Primary Examiner
Art Unit 1796

THY/June 2, 2009